

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia.

APRIL TERM, 1907.

No. 1782.

489

THE CUNNINGHAM MANUFACTURING COMPANY, A
CORPORATION, APPELLANT,

vs.

THE ROTOGRAPH COMPANY, A CORPORATION.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED APRIL 29, 1907.

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COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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In the Court of Appeals of the District of Columbia.

No. 1782.

THE CUNNINGHAM MANUFACTURING COMPANY, a Corporation,
Appellant,

vs.

THE ROTOGRAPH COMPANY, a Corporation.

a Supreme Court of the District of Columbia.

At Law. No. 48882.

THE ROTOGRAPH COMPANY, a Corporation, Plaintiff,

vs.

THE CUNNINGHAM MANUFACTURING COMPANY, a Corporation,
Defendant.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Transcript of Proceedings Before Justice of the Peace.*

Filed October 22, 1906.

In Justice's Court of the District of Columbia.

Sub-district No. 5.

48882. No. 12171.

THE ROTOGRAPH COMPANY, a Corporation, Plaintiff,

vs.

THE CUNNINGHAM MANUFACTURING COMPANY, a Corporation,
Defendant.

Date.	Proceedings.
August 27th, 1906.	Summons and Copy issued returnable August 29th, at 2 P. M.
" 28th,	Ret. summoned.
" 29th,	Cont. by def't to Sept. 19th at 2 P. M. & to Sept. 28th at 2 P. M. and to Oct. 13th at 2 P. M.
Oct. 13th,	Trial had and taken under advisement.
" 16th,	Judgment for pl'ff for \$225.85 (100. on interest from March 25th, 1906).
" "	Notice of Appeal filed by Def't ret. Oct. 19th at 10 A. M.
" 19th,	Appeal Bond approved with The Title Guaranty & Surety Company as surety.

I, Lewis I. O'Neal, Justice of the Peace in and for the said Sub-district, do hereby certify that the foregoing is a true copy of my Docket entries and of all the proceedings had before me in the above cause, and that the annexed documents are all the original papers filed in said cause.

Given under my hand — seal this 19th day of October, A. D. 1906.

LEWIS I. O'NEAL, [SEAL.]
Justice of the Peace.

Address: Sub-Dist. 5.

Costs paid by Plaintiff, \$2.35.

Costs paid by Defendant, \$1.75.

Memorandum.

January 30, 1907.—Verdict for Plaintiff for \$225.85.

Supreme Court of the District of Columbia.

FRIDAY, *February 15th*, 1907.

Session resumed pursuant to adjournment, Hon. Thos. H. Anderson, Justice presiding.

* * * * *

Before Judge Barnard.

No. 48882. At Law.

THE ROTOGRAPH COMPANY, Corporation, Plaintiff,
vs.

THE CUNNINGHAM MANUFACTURING COMPANY, Def't.

Upon consideration of the motion for a new trial filed herein, it is ordered that said motion be and is hereby overruled, and judgment on verdict is ordered: Thereupon, it is considered and adjudged, that the plaintiff herein recover of the defendant herein and

3 The Title Guaranty Surety Company, its surety, the sum of Two Hundred and Twenty-five Dollars and Eighty-five cents, with interest thereon from this date, together with costs of suit, to be taxed by the Clerk, and have execution thereof.

From the foregoing the defendant in open court notes an appeal. Thereupon, bond to operate as a Supersedeas is hereby fixed in the sum of Four Hundred Dollars, or for costs in the sum of Fifty Dollars.

Memorandum.

March 5, 1907.—Appeal bond filed.

Supreme Court of the District of Columbia.

WEDNESDAY, *March 27th*, 1907.

Session resumed pursuant to adjournment, Hon. Thos. H. Anderson, Justice, presiding.

* * * * *

No. 48882. At Law.

THE ROTOGRAPH COMPANY, a Corporation, Plaintiff,

vs.

THE CUNNINGHAM MANUFACTURING COMPANY, a Corporation,
Defendant.

Comes now the defendant herein by its attorneys Messrs. Wilson & Barksdale, and submit- to the Court the Bill of Exceptions
4 taken at the trial of this cause and pray- that the same be
signed and made of record, now for then, whereupon said bill
of exceptions is signed and ordered of record.

Further the time within which to file a transcript of the record
in the Court of Appeals is hereby extended to and including May
1st, 1907.

Bill of Exceptions.

Filed March 27, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 48882.

THE ROTOGRAPH COMPANY, a Corporation,

vs.

THE CUNNINGHAM MANUFACTURING COMPANY, a Corporation.

This cause came on for trial before Mr. Justice Barnard and a jury
on the 30th day of January 1907, and thereupon and before the
jury was sworn the defendant in open Court tendered to counsel for
plaintiff the sum of \$22.59 and costs of suit up to that time, the same
being made to keep good the tender made in the Court below. But
counsel for Plaintiff refused said tender, whereupon the jury was
sworn to truly try the issues joined in said cause, and the plaintiff,
the Rotograph Company, to maintain the issues on its part joined,
produced WILLIAM J. WEED, who gave his testimony by deposition
as follows:

5 That he is the general sales manager of the plaintiff and
that he sent out circular letters quoting prices on sepia cards
containing views of Washington. Whereupon witness was
asked the following questions: "State how you wrote out the letter

and all that and how you dictated it to your stenographer." To which question counsel for defendant objected on the ground that it was not shown that the dictation was in presence of defendant and he could not be bound by it. The Court overruled the objection, to which action counsel for the defendant reserved this his first exception and the exception was noted by the Court on his minutes. The witness was allowed to answer, as follows:—"I dictated a letter to my stenographer to be used as a copy for a circular letter to be sent to concerns, a list of which I gave her. Afterwards she gives me a copy of what I had dictated and which I correct."

Whereupon witness was asked the following question: "After dictating this circular letter to your stenographer, did she submit a copy to you thereof?" To which question counsel for the defendant objected unless it was first shown that the stenographer submitted to the witness the letter which this defendant received and on which he acted. But the Court overruled the objection, to which action of the Court counsel for the defendant reserved this his second exception which was noted by the Court on its minutes. The witness then answered; "She did."

Whereupon the witness was asked the following question: "I hand you what purports to be a carbon copy of a circular letter offering these cards to the trade, and state whether or not that is a
6 carbon copy of the letter you dictated?" To which counsel for the defendant objected on the ground that it was immaterial and irrelevant. But the Court overruled the objection. To which action counsel for defendant reserved this his third exception which was duly noted by the Court on his minutes. The witness answered that it was a carbon copy and they used the original to send to a customer by putting his name on the top.

Whereupon witness further testified that no corrections were made on the original letter and that the defendant was among the customers to whom he sent a copy of what purported to be a copy of the letter. That he had a list of the customers to whom the letters were sent. (It was agreed between counsel that the list would be produced, but at the trial counsel for the plaintiff explained that the list had been mislaid or destroyed.) Whereupon the carbon copy was offered in evidence. To which offer counsel for the defendant objected on the ground that it was incompetent, because the letter is, or purports to be a carbon and not the original as well as a letter having been dictated to a stenographer. The Court overruled the objection, to which action counsel for the defendant reserved this his fourth exception which was noted by the Court on its minutes. The carbon copy of the letter was then admitted in evidence and read to the jury. It is as follows:—

First Letter.

NEW YORK, March 7, 1906.

7 GENTLEMEN: We beg to enclose herewith a sample of a new card we are just publishing of Washington, and also a list of views finished in this style. At the present time we have quite a stock of all of the views on hand and would like to hear

from you regarding an order for same. These cards regularly sell at \$15.00 per thousand but we are willing to make a jobber's price of \$10.00 per thousand, providing we receive your order immediately. We cannot duplicate orders of these goods, after the stock has been exhausted, in less than four months, so it will be necessary for you to give the matter your prompt attention, as the stock will not last indefinitely and it will be a case of first come, first served. The enclosed list of views combine the best things in Washington and we should be pleased to hear from you by return on this matter.

Yours truly,

THE ROTOGRAPH COMPANY.

Dic. W. J. W.

M. Y. P.

Whereupon the witness further testified that he instructed the stenographer to make a certain number of copies of that letter one to be sent to each of the concerns, of which he gave her a list of the names. The copies that were made were submitted to witness by the stenographer in a general way and he simply signed them. That he did not read them over as that is something that he never does. They were simply circular letters and he considered them the same as printed letters. There were about twenty-five sent out. They were presented all together, giving a place to sign his name to each one, except the top one which of course lay open. It was an ordinary thing which he does almost every day. The manner in which
8 letter was sent was in the usual course of business. That he received a reply from the defendant which was offered in evidence and is as follows:—

MARCH 10, 1906.

The Rotograph Co., N. Y.:

In answer to your letter of the 7th inst., will say, your sample card sent us is very good and owing to the price you quote us the stock must be faulty in some way or your stenographer made a mistake in the price. If the stock is good and price if correct as quoted us, will take several thousand.

Yours truly,

THE CUNNINGHAM MFY. CO.,
J. N. C.

Whereupon witness testified that he replied to the letter. At the time he looked up a copy of the circular which they claim there was a mistake in, a copy of the circular he had on hand. Whereupon witness was asked the following question:—"What was the copy you had on hand of the circular at that time? Was that the carbon copy of the letter which has been offered in evidence as March 7, 1906?" To which question counsel for defendant objected. But the Court overruled the objection. To which action counsel for defendant reserved this his fifth exception, which was noted by the Court on its minutes. To which witness responded, "Yes."

Whereupon witness further testified that he had no memorandum or data from which he could ascertain any error that was committed by him, the stenographer or any one connected with the company, in reference to the price that was submitted to the defendant, that he responded to letter of March 10th, after he looked over the circular letter; and the response was offered in evidence and is as follows:—

NEW YORK, *March 12, 1906.*

GENTLEMEN: In reply to your valued favor we beg to inform you that the cards of which we sent you a sample are first class in every respect, and we will guarantee there is nothing the matter with them and will accept the return of any that you find in any way defective or in any way not corroborating our assertions. One particular reason why we are making this drive is that there is an inferior card on the Washington market of the same style, and we propose to drive it out by selling our cards at cost. These goods are sold you F. O. B. N. Y. If they were sold F. O. B. Washington, we would lose money on them. We have thirty-eight subjects in stock at the present time and we are sending you under separate cover a set of them and trust that you will be able to make up a good sized order on same. One thing we wish you to thoroughly understand, we positively guarantee that these goods are first class in every respect.

Yours truly,

THE ROTOGRAPH COMPANY,
W. J. WEED.

Dic. W. J. W.
M. Y. P.

Whereupon witness testified that he received from defendant the following order:—

MARCH 15, 1906.

The Rotograph Co., New York.

GENTLEMEN: Please send us the following postal cards as per sample and per price named in your letter of March 7, '06. We enclose 20 sample subjects that we want and the amount of each subject we want is as follows: 300 each—California Red Wood—Lafayette Monument—Garfield Monument & Rochambeau Monument. 400 Washington's Tomb. 500 each—Peace Monument—Lee Home—Thomas Circle—Pension Office—Soldiers Home and Smithsonian Institute—700 each—Monument and Patent Office. 1000 Penna. Av., 3000 Mt. Vernon—2000 each of Treasury building and State War and Navy building—3000 Library—3000 White House—and 5000 Capitol—making a total of 25000.

Yours truly,

THE CUNNINGHAM MFG. CO.,
JOHN N. CUNNINGHAM, *Man.*

Let them come by freight. Be sure you give us the amount of each subject as ordered. Don't substitute.

Whereupon witness testified that he shipped goods to defendant and the original shipment is offered in evidence as follows:—

Cunningham Mfg. Co., 229 7th St. S. W., Washington, D. C.

References O. K. W.

Quantity ordered.	Style, S.	Number.	Quantity shipped.	How ship.	freight.
300		204	300		
		222	300		
		221	300		
		223	300		
400		218	400		
11 500		220	500		
		217	500		
		209	500		
		240	500		
		226	500		
		227	500	O. K. W. G.	
700		219	700		
700		241	700	March 22, 1906.	
1000		215	865		
3000		217	3000		
3000		204	2870		
3000		209	2990		
2000		211	2000		
2000		212	2000		
5000		200.	2860		
	Totals	Price	Quantity		
	Style	\$10.00	shipped.		
	S.		22585		

Whereupon witness testified that the goods were shipped of his personal knowledge March 20, 1906, by freight he thinks over the Pennsylvania Rail-Road, not later than 1 P. M. or it might be a little before or after twelve. That prior to shipping goods he wrote the defendant a letter. That he did not have on hand the amount of goods ordered and he notified defendant of shortage in the following letter:

MARCH 19, 1906.

12 GENTLEMEN: Your valued order has been received by us, for which please accept our thanks. We are shipping you same by freight. We, however, cannot ship any more than 3000 of the capitol as that is all that we have in stock. If you desire us to order any more in for you we will certainly do so. These goods we particularly desire you to enter into competition with the vastly inferior brown card that is on the market in Washington at the present day. We have no doubt whatever that as soon as these goods are introduced, if they are introduced properly, they

will drive all competition of the same style out of the market, and we trust you will have success with them that your enterprise merits.

Yours truly,

THE ROTOGRAPH COMPANY.
W. J. WEED.

Dic. W. J. W.
M. Y. P.

Whereupon witness testified that he sent bill to defendant by mail same afternoon that goods were shipped. The bill is as follows:—

NEW YORK, *March* 20, 1906.

Cunningham Mfg. Co., Washington, D. C., to The Rotograph Co.,
Dr.

22585 Style S. at \$10..... \$225.85

Shipped by freight.

The bill was not sent by him personally. That he did not send bill out or enclose it either. That the bill was sent back by the defendant and received by him personally March 22, 1906. That after the goods were shipped he received the following letter from
13 defendant, enclosing the bill:—

MARCH 21, 1906.

The Rotograph Co., New York.

GENTLEMEN: We have just received your bill for Postal Cards and return it for correction. The price of these Cards is \$1.00 instead of \$10.00 as you bill them. We refer you to your letter of the 7th inst., when you sent us sample and price.

Yours truly,

THE CUNNINGHAM MANF. CO.
J. N. C., *Manager*.

That up to time of receipt of this letter he had no knowledge, information, or belief, or reason to cause him to suspect, that the price quoted to defendant was other than contained in carbon copy of circular. That he replied to the letter as follows:—

NEW YORK, *March* 22, 1906.

GENTLEMEN: In reply to your valued favor we beg to inform you that there is evidently an error some place. The price of the cards as quoted you was Ten dollars (\$10.00) per thousand and not one dollar. The duty alone on these cards costs us \$2.25 per thousand and you can readily understand that it would be impossible for us to sell same at any such price as \$1.00 per thousand. If the price we gave you is not satisfactory at \$10.00 per thousand, we would request that you send us the cards immediately as we have orders

that will take up all the stock. Kindly return us the letter in which you state that you are quoted \$1.00 per thousand.

Yours truly,

THE ROTOGRAPH COMPANY.
W. J. WEED.

Dic. W. J. W.
M. Y. P.

14 That the defendant did not return the letter asked for nor the goods. That defendant replied as follows:—

WASHINGTON, D. C., *March* 24, 1906.

Rotograph Company, New York.

GENTLEMEN: In answer to your letter of the 22nd inst. will say, the price you quoted us, with sample card, is positively one dollar per thousand, letter of March 7. We wrote you and asked if there was not a mistake in price or faulty stock and your answer was that stock was first class, in view of this we ordered the cards in good faith and intend to pay you only one dollar per thousand.

Yours truly,

THE CUNNINGHAM MANFG. CO.
J. N. C., *Manager*.

That he has received no money on account of this claim.

Whereupon witness was asked the following questions:—

“What is the reasonable price of goods shipped to defendant?” To which counsel for defendant objected on the ground of its immateriality for if there was any contract at all, that is the price at which goods must be sold. But the Court overruled the objection. To which action counsel for defendant reserved this his sixth exception, which was noted by the Court on its minutes. The witness was allowed to answer as follows: “The price we had been asking was \$15. but we were willing to sell them at \$10.”

15 Whereupon witness was asked the following question: “State whether or not you ever sold any cards of this kind and character and quality at less than \$10.” To which question counsel for defendant objected. But the Court overruled the objection. To which action counsel for defendant reserved his seventh exception, which was noted by the Court on its minutes. And the witness answered: “No, never.”

Whereupon witness was asked the following question: “What is the cost price of those goods, that is, the price to you?” To which question counsel for defendant objected on the ground of immateriality. But the Court overruled the objection. To which action counsel for defendant reserved this his seventh exception. And witness answered: “It runs between \$6 and \$7 in New York City.”

Whereupon witness further testified that the goods are made in Germany and that the duty on them runs from \$1.50 to \$2.25 a thousand. That no cards of this kind or quality are made in this country that he ever heard of. That he has been in business of selling scenic cards since December 1905 and the reasonable market

price of goods is \$10. That plaintiff had theretofore had dealings with defendant. That he obtained defendant's name from Dun's agency as being stationers or handling books or something of that kind. That he made the offer of \$10.00 in good faith.

Whereupon witness was asked the following question: "Did you ever have any intention, as an officer, or manager of the company to make an offer of a less price to defendant or anybody else?" To

16 which counsel for defendant objected on the ground that he could not testify as to his intention as he was bound by his letter. But the Court overruled the objection. To which action counsel for defendant reserved this his eighth exception, which exception was noted by the Court on its minutes. And the witness answered: "No, sir."

Whereupon witness was asked the following question: "Had you any authority from your employers to make a price at less than \$10. a thousand? To which counsel for defendant objected on the ground of incompetency. But the Court overruled the objection. To which action counsel for defendant reserved this his ninth exception, which was noted by the Court on its minutes. And the witness answered: "None."

Whereupon witness further testified that the price was fixed by their buyer of the cards, and the only reasonable explanation he can make as to how mistake occurred was that it was a mistake in type-writing, probably by the period being placed after the "1" instead of the first "0."

On cross-examination the witness further testified that he knew a great deal about the manufacture of postal cards. That he has never been engaged in the business but he had given out quite a little work. That the only information he has about cards has been gained as manager of plaintiff since December 1905. That his duties are merely as manager. Examined letter dated March 7, 1906. (The same being the one sent by plaintiff to defendant, and hereafter offered in evidence) and marked Defendant's exhibit "A," and said it was his signature. And that the letter was sent out from the Company. That he did not read it over because it was a circular

17 letter and he never reads circular letters. That it contained an offer at which he expected to dispose of the goods.

That he does not see letters after they are signed by him and turned over to stenographer. That he did not retain a press copy or carbon copy of letter of March 7, 1906, (Defendant's Exhibit "A") because it was a circular letter and he had something else to do, besides reading the circular letters. That he opens a thousand letters a day and answers them and distributes them in his office, and has 140 hands under him. The mailing clerk and not witness mailed the bill for the goods. It was sent on March 20. That his answer as to time of receipt is based on the fact that defendant answered and sent the bill back on the 21st and that he personally received the bill back again from Washington on the next day. That he had nothing to do with the shipping of the goods personally and does not superintend it. He has a shipping clerk, and he attends to

that. That they made a reduction in the card because the salesmen could not sell them at \$15.00 a thousand. That he takes carbon copies of all regular correspondence; of everything except circular letters. The stenographer who made this error is still in plaintiff's employ. After receipt of defendant's letter calling attention to the error he asked the stenographer to get the carbon copy of letters they sent out. That was all he asked her.

Whereupon counsel for the plaintiff rested.

Whereupon counsel for the defendant to maintain the issues joined on its part produced JOHN N. CUNNINGHAM who testified as follows:—

18 That he is the President and manager, of the defendant company, engaged in the manufacture of picture frames and art novelties. That he conducted the correspondence, set out in the record on behalf of the defendant. That he never saw the carbon copy of the letter of March 7, 1906, offered in evidence by the plaintiff, nor the original. That he received a letter dated March 7, 1906, offering the cards at \$1.00 per thousand, which letter was then offered in evidence. (Said letter is Defendant's exhibit "A" and is the same as the carbon copy offered by plaintiff except that it contains the name and address of the defendant and the price quoted is \$1.00 instead of \$10.00, and bears no evidence of being a circular letter. That it is stipulated and agreed between counsel that all of the original correspondence shall be produced and used by either side at the hearing of this case on appeal.) That he thought at first there might be some mistake about price or the stock was faulty, but after he received plaintiff's letter of March 12, advising that quality was guaranteed and that the particular reason plaintiff was making reduction was to drive out inferior card on the Washington market he felt assured there was no mistake. That he ordered the goods in perfect good faith and without the knowledge or suspicion of any error or mistake in price, believing the price was \$1.00 per thousand. That he did not know, and had no reason to believe, that the letter of March 7, was a circular letter. That the goods arrived on March 21, 1906, between 2 and 3 o'clock in the afternoon, and were received and accepted by him and at once unpacked and placed upon his shelves. That afterwards, between 4 and 5 o'clock of the
19 same afternoon, he received the bill for the goods, showing price of \$10 instead of \$1.00. That he immediately wrote plaintiff the letter of March 21, 1906 calling its attention to the discrepancy between the bill and the price quoted. That he had no intimation of the alleged error, other than heretofore testified to until the receipt of the bill, which was on the same day returned to plaintiff for correction. The receipt of plaintiff's letter of March 22, 1906, contained the first intimation he had as to the alleged mistake. In reply to a question by the Court witness said that the reason that he did not return the goods after receipt of plaintiff's letter was because he had in good faith made a contract with plain-

tiff to deliver the cards at \$1.00 per thousand, and had received the goods and he did not desire to cancel it.

On cross-examination, defendant testified that he had been dealing in postal cards prior to this transaction and had only paid from \$1.50 to \$2.50 per thousand for the goods handled. That he was not an expert on the quality of postal cards. That the cards came in packages of 100 each and 1000 in each box and that he had unpacked them all and put them upon his shelves before he received the bill. Did not count them. That he had been dealing in postal cards about a year prior to this transaction and had paid from \$2 to \$3 a thousand for some cards of this kind, but they were not as good as these. Had disposed of a large number of these cards at \$5 and \$6 per thousand, and has about 7 or 8 thousand left. That buying these goods at \$1.00 per thousand and selling them at \$5 and \$6 per thousand was not unusual in the picture business. In

20 reply to a question by the Court, why he did not return the goods when he received plaintiff's letter advising him that a mistake had occurred, said that he considered he had made a legal contract and proposed to keep the goods and pay only the price at which they were sold to him. Didn't know that there was any mistake made until letter of March 22. Received bill in evening mail and answered it before he got up from his desk.

Thereupon the defendant rested.

And as this was all the testimony in the case, the Court was asked on behalf of the plaintiff to instruct the jury; 1st. That from the facts in the case there was no meeting of minds of the parties, and therefore no contract. 2nd. That if they believed the defendant was advised after receipt of goods that the price was \$10.00 per thousand and he then kept them, that the plaintiff should recover the amount sued for. To which instructions and each of them counsel for defendant objected, but the Court overruled the objections. To which action counsel for defendant reserved this his tenth and eleventh exceptions which were noted by the Court on its minutes. Whereupon counsel for the defendant offered the following instructions:

1. The jury is directed to return a verdict for the plaintiff for \$22.59. (Refused and exception noted.)

3. The jury is instructed that if they believe that the alleged mistake was the consequence of the negligence and carelessness of the plaintiff's servants, which ordinary prudence might have prevented, and the defendant was not a party to the mistake, then the plaintiff cannot recover more than \$22.59. (Refused and exception noted.)

21 4. If the jury believe from all the evidence that plaintiff made an offer to sell defendant cards at \$1.00 per thousand and that defendant ordered 25,000 cards at the price offered and that plaintiff could not ship the full amount ordered but sent 22,590 and that said cards were received and accepted by the defendant, that said facts constitute an executed contract for that amount at that price between the parties, and plaintiff cannot recover but \$22.59. (Refused, and exception noted.)

5. If the jury believe that both parties to this transaction acted in good faith, and yet an error occurred through the negligence of the servants of one, that that party should bear the loss whose servant was guilty of the negligence. (Refused, and exception noted.)

6. The jury is instructed that if they believe that the plaintiff's agent in carrying on negotiations between plaintiff and defendant failed to do what an ordinarily prudent man would have done under the circumstances, and that by reason of such failure the alleged mistake occurred, that the law will not permit plaintiff to allege as a defence that its agent made a mistake, and therefore the plaintiff can only recover \$22.59. (Refused, and exception noted.)

7. The jury is instructed that although they believe from all the evidence that there was an error in plaintiff's letter of March 7, 1906, containing the offer, and that said error was unknown to, and unsuspected by the defendant, and that the defendant accepted the

22 offer contained in the aforesaid letter, that such acceptance constituted a valid and binding contract between the parties, and the plaintiff can only recover according to its terms. (Refused, and exception noted.)

But the Court refused all of the aforesaid defendant's instructions; to the rejection of each an exception was reserved and allowed by the Court and noted on its minutes.

Whereupon the Court of its own motion instructed the jury that there was no meeting of the minds of the parties to this transaction and therefore no express contract, as the plaintiff was writing about a price of \$10.00 per thousand and the defendant about \$1.00.

That the defendant had reason to believe there was a mistake in price quoted when he received the letter of March 7, 1906, and as an evidence of want of good faith, he failed to quote back the price in his letter of inquiry of March 10, 1906.

That these appeal cases from Justice's of the Peace should be tried according to the law, equity and right of the matter.

That this is a case for the application of the Golden Rule and if the jury believe that the plaintiff offered to do what was right by taking the goods back after the discovery of the mistake, but the defendant kept them, then the defendant is liable for the reasonable value of the goods.

That the only question for the jury's determination is as to the defendant's good faith in retaining the goods after being informed as to the mistake. If the jury find that defendant retained

23 the goods after plaintiff had asked it to return them if the price of \$10. was not satisfactory, then the jury should return a verdict for the plaintiff for the full amount sued for.

To the said instructions counsel for defendant reserved an exception, especially to that part referring to the Golden Rule and the meeting of minds, which was noted by the Court on its minutes.

Thereupon the jury retired and returned a verdict for plaintiff for \$225.85, without interest.

Be it remembered that the separate and several exceptions taken by counsel for defendant to the rulings of the Court as to the admis-

sion of evidence, the substance of the whole evidence being hereinbefore set out in this bill of exceptions, and the action of the Court in the granting and refusing instructions to the jury, were taken by counsel for defendant then and there, before the jury retired, separately and severally, and said exceptions were then and there separately and severally noted upon the minutes of the Justice presiding at the trial; and counsel for defendant then and there prayed the Court to sign and seal this bill of exceptions, to have the same force and effect as if each of said exceptions were separately and severally set forth in a separate bill of exceptions; and at the request of counsel for defendant the same is accordingly signed and sealed and made a part of the record in this cause now for then, this 27th day of March 1907.

JOB BARNARD, *Justice*.

This bill of exceptions is satisfactory to us.

GITTINGS & CHAMBERLIN.
WILSON & BARKSDALE.

24 *Designation of Record.*

Filed April 1, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 48882.

THE ROTOGRAPH COMPANY, a Corporation,
vs.

THE CUNNINGHAM MANUFACTURING COMPANY, a Corporation.

The Clerk in preparing the transcript of record in the above entitled cause will embody the following, viz:

1. Transcript of proceedings before Justice of the Peace.
2. Memo: Verdict of Jury.
3. Judgment on Verdict, appeal noted and bond fixed.
4. Memo: Bond filed.
5. Time extended to file transcript.
6. Bill of Exceptions.
7. Designation of Record.

WILSON & BARKSDALE,
Attorneys for Defendant.

25 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 24, both inclusive, to be a true and correct transcript of the record,

according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 48,882, at law, wherein The Rotograph Company, a corporation, is Plaintiff, and The Cunningham Manufacturing Company, a corporation, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the city of Washington, in said District, this 25th day of April A. D., 1907.

[Seal Supreme Court of the District of Columbia..]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 1782. The Cunningham Manufacturing Company, a corporation, appellant, *vs.* The Rotograph Company, a corporation. Court of Appeals, District of Columbia. Filed Apr. 29, 1907. Henry W. Hodges, clerk.